IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5336 OF 2004

Ashok Kumar Srivastava Applicant

versus

HDFC Bank Respondent

ALONGWITH
CRIMINAL REVISION APPLICATION NO.5337 OF 2004

Ashok Kumar Srivastava Applicant

versus

HDFC Bank Ltd. and another Respondents

Mrs.Snehlata Shrivastav i/by Mr.N.V.Vechalekar for applicants.

Ms.Nipa Singh i/by M/s.Mahesh Menon & Co. for respondent no.1.

Mr.K.V.Saste, APP for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 2nd December 2005

PC :

1. These matters were directed to be listed for final hearing at the admission stage itself.

2. Rule. Rule returnable forthwith by consent.

3. In both the matters the plea raised is identical namely a complaint was lodged u/s 138 of the Negotiable Instruments Act and that petitioners-accused failed to honour the cheques which were handed over in partial disbursement of the loan amount sanctioned and disbursed. The instalment (36 in number) were to be of Rs.3,091/- each. Two cheques of this amount were forwarded in one complaint and are subject matter of the same whereas two more cheques of the same amount are subject matter of the other complaint.

4. The contention raised by the learned advocate appearing for petitioners is that a demand draft was forwarded immediately upon receipt of notice from respondent no.1 bank. The demand draft was handed in. Despite the demand draft being handed over within the period prescribed by Section 138 of the Negotiable Instruments Act and the proviso thereto, the bank has gone ahead and filed instant complaint. It is contended that payment was made upon receipt of notice and prior to the period prescribed by statute. The payment of the amount of the cheques which were allegedly dishonoured, was made by the petitioner-accused. Hence the complaint itself was not maintainable.

5. With the assistance of the advocates appearing for both sides, I have perused the complaint. In the complaint, apart from the aforesaid pleas pertaining to the payment not being raised, it is alleged that when the original cheques were forwarded for encashment through HDFC Bank, the petitioners' banker rejected the same with endorsement "account closed". I enquired from the learned counsel for the bank as to how in these circumstances a complaint would be filed u/s 138 and with all fairness she was unable to indicate anything. Without going into the aspect of demand drafts being forwarded that would constitute payment within the meaning of proviso to Section 138, since the complaint itself discloses no offence, it has to be quashed. The petitions succeed. The complaints under section 138 of the Negotiable Instruments Act, 1881 are quashed. However, it would be open for the respondent bank to initiate such proceedings as are permissible in law either alleging offences under IPC or appropriate civil proceedings for recovery of the sums due and payable under the loan agreement.

(S.C.DHARMADHIKARI, J.)